

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHARM KOSIN, as the personal)
representative of the Estate of)
Marvin H. Kosin, Jr., deceased,)
)
Plaintiff,)
)
v.) Case No. 4:17 CV 2435 CDP
)
UNION PACIFIC RAILROAD)
COMPANY,)
)
Defendant.)

MEMORANDUM AND ORDER

I have reviewed defendant Union Pacific Railroad Company's motion for summary judgment, and the materials and briefs submitted in support of each party's position, and find there to be genuine issues of material fact in dispute between the parties, including but not limited to whether and/or when the deceased Marvin H. Kosin, Jr., knew or should have known that the conditions of his employment with Union Pacific caused his metastatic bladder cancer; whether reasonable investigation would have revealed the cause of his cancer on or before April 16, 2011; and, if so, whether the deceased could have but unreasonably failed to investigate the cause of his cancer.

Based on the evidence and information before the Court, and drawing all reasonable inferences in favor of plaintiff, the nonmoving party, I conclude that a

jury must determine as a factual matter when the claim for the deceased's injury accrued. Therefore, I cannot say that Union Pacific has established its right to judgment with such clarity as to leave room for no controversy and that plaintiff is not entitled to prevail under any discernable circumstances. *Vette Co. v. Aetna Cas. & Sur. Co.*, 612 F.2d 1076, 1077 (8th Cir. 1980).

Accordingly,

IT IS HEREBY ORDERED that defendant Union Pacific Railroad Company's Motion for Summary Judgment [38] is **DENIED**.

IT IS FURTHER ORDERED that no later than October 15, 2018, counsel for the parties shall meet and confer and file with the Court a revised joint proposed scheduling plan to set a schedule for all remaining discovery as well as all other outstanding matters, including referral to mediation and a trial date.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 24th day of September, 2018.